IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.44 of 1993.

Decided on : October 23, 2007

State of H.P. **…Appellant.**

Versus

Uttam Chand and another **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. G.D. Verma, Senior Advocate, with Mr. B.C. Verma, Advocate.

Surjit Singh, Judge(Oral)

This appeal by the State is directed against the judgment dated 25.8.1992 of the learned Sessions Judge whereby respondents Uttam Chand, the husband, and Pinja, the father-in-law of deceased Malika Devi, have been acquitted of the charge under Sections 306 and 498-A IPC.

2. Deceased Malika Devi was married to respondent Uttam Chand on 15.2.1990. On 15.7.1990, she consumed aluminium phosphide. She was rushed to Primary Health Centre, Bhawarna, where she died, without making any statement. Parents of the deceased were informed of her death. PW-3 Jogal Ram, the father of the deceased, made a statement to the Police that the deceased was harassed by the respondents, because she was suspected of infidelity.

Whether reporters of the local papers may be allowed to see the judgment?

3. Police registered a case against the respondents. During the course of investigation, a Photostat copy of one complaint, drafted by an Advocate, practicing at Palampur, allegedly at the instance of the deceased, was produced by PW-3 Jogal Ram to the Police. As per the contents of this Photostat copy of the complaint, Ex. PW-3/C, the deceased was harassed and subjected to beatings by the respondents, because of her having not brought dowry to their expectations. It also came to notice during the course of investigation that on the day of the commission of the suicide by the deceased by consuming poison, her parents, namely father Jogal Ram (PW-3) and mother Taro Devi (PW-4), had gone to her matrimonial home to get her back to their place so that she could be with them for 4-5 days during the rainy season, but the respondents created a scene and hurled abuses at the parents of the deceased and also did not allow the deceased to go with them.

4. Respondents were charged with offences punishable under Sections 306 and 498-A IPC. They pleaded not guilty to the charge and were, therefore, put on trial.

5. Prosecution examined 14 witnesses to substantiate the charge. It is only the parents of the deceased who testified against the respondents. PW-3 Jogal Ram, who lodged FIR Ex. PW-3/A, changed his version altogether. He stated that the respondents used to demand television, scooter and other articles, on account of dowry, and because of his inability to meet the demand, the respondents harassed the deceased and gave her beatings and fed up with such treatment she committed suicide. In the FIR, there is no mention of any demand for dowry, leave alone scooter, television, etc.

6. On the day of the occurrence, the parents of the deceased went to Jagir Singh, the Pradhan of the Gram Panchayat, who lives in

the same village as the respondents, with some complaint against the respondents. Said Pradhan Jagir Singh called CW-1 Bardu Ram and asked him to call the respondents. When respondent Uttam Chand went to the house of the Pradhan and noticed his father-in-law and mother-in-law there, he requested them to come to his place and discuss the issues, if any. Thereafter, PW-3 Jogal Ram, PW-4 Taro Devi, the Pradhan of the Gram Panchayat, CW-1 Bardu Ram and some other persons went to the house of the respondents. There PW-3 Jogal Ram and PW-4 Taro Devi declared that they had come to take the deceased with them. Respondent Pinja Ram told them that his wife was sick and admitted in the PGI at Chandigarh and as soon as she was discharged from PGI and returned home, the deceased would be sent to their place to spend a few days with them. The parents of the deceased were, however, adamant to take the deceased along, that very day. The deceased herself requested her parents not to be so adamant and that she would be visiting them soon after the return of her mother-in-law from PGI Chandigarh. Thereafter, PW-3 Jogal Ram, the father of the deceased, caught hold of the deceased by her wrist and started pulling her out of the matrimonial home and proclaimed that he would take her forcibly. The deceased caught hold of an iron bar of the window with the other hand to foil the attempt of her father. PW-3 Jogal Ram and PW-4 Taro Devi then started cursing the deceased and declared that they were disowning her and would not let her come to their place in future. These facts are testified by CW-1 Bardu Ram whom the prosecution did not want to examine, as its witness, even though he was cited as a witness in the challan. The learned Public Prosecutor gave him up on the plea that he had been won over. The

prosecution also did not examine the Pradhan of the Panchayat Jagir Singh with the same plea.

7. It has come in evidence that once the deceased was not allowed by her parents to return to the matrimonial home when respondent Uttam Chand went to call her. Respondent Uttam Chand then sought the intervention of the Pradhan of Gram Panchayat Aima, namely PW-10 Onkar Chand. The fact is testified by this witness. It has also come in the evidence that the deceased had taken the examination of 10+1 standard after marriage and the respondent Uttam Chand used to take her to the village of her parents where there was examination centre, on every day of the examination.

8. It is true that in Ex. PW-3/A, a complaint, which the deceased allegedly got drafted from PW-9 Shri R.P. Ghogra, an Advocate, it is mentioned that the deceased was subjected to ill-treatment, including beatings, on account of insufficiency of dowry, but it has not been shown as to what happened to that complaint. Furthermore, the complaint was written by the above named witness when the father of the deceased was also with her. The complaint is dated 13.3.1990. Thereafter, the deceased had been living with the respondents. As per testimony of CW-1 Bardu Ram, she was not prepared to go with her parents when they went to get her to their place on 15.7.1990, the day she consumed poison. The allegation in the complaint about the ill-treatment and beating of the deceased by the respondents, on account of her having not brought dowry to their expectations, appears to be not true, because had it been true the mention of this allegation should have been there in the FIR also. As already noticed, the ground of alleged beating and ill-treatment, as recorded in the FIR, is the infidelity of the deceased.

9. In view of the abovestated position, we are of the view that the trial Court has rightly acquitted the respondents. Hence, the appeal is dismissed.

(Surjit Singh), J

October 23, 2007(sd) **(Surinder Singh), J**